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No. 70

In the Supreme Court of the United States

OCTOBER TERM, 1939

AMERICAN FEDERATION OF LABOR, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AND PACIFIC COAST DISTRICT INTERNATIONAL LONGSHOREMEN'S ASSOCIATION No. 38, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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OPINIONS BELOW

The opinion of the court below (R. 69–75) is reported in 103 F. (2d) 933. The opinion of the National Labor Relations Board is reported in 7 N. L. R. B. 1002 (R. 6–58).

JURISDICTION

The decree below was entered on February 27, 1939 (R. 75). The petition for certiorari was filed

on May 26, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (f) of the National Labor Relations Act.

QUESTION PRESENTED

Is a certification issued under Section 9 (c) of the National Labor Relations Act that a particular labor organization has been designated as representative for purposes of collective bargaining by the majority of the employees in an appropriate unit reviewable by the Court of Appeals for the District of Columbia under Section 10 (f) of the Act?

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449; U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are set forth in the Appendix, *infra*, pp. 17–24.

STATEMENT

The International Longshoremen's and Warehousemen's Union, District No. 1 (I. L. W. U.), affiliated with the Congress of Industrial Organizations (C. I. O.) petitioned the National Labor Relations Board to certify it pursuant to Section 9 (c) of the Act, as the exclusive bargaining agent for the longshoremen on the Pacific Coast (R. 8). Petitioners herein, who are the American Federation of Labor, International Longshoremen's Association (I. L. A.), and Pacific Coast Dis-

trict International Longshoremen's Association No. 38, opposed this application. After lengthy hearings and a brief filed on behalf of the employers' associations (R. 10), the Board entered its findings of fact, conclusions of law, and certification (R. 6–58). The Board found that the employees engaged in longshore work in the Pacific Coast ports of the United States for the companies which are members of certain employers' associations [1] constituted a unit appropriate for purposes of collective bargaining under the Act, and certified that the I. L. W. U. had been designated by a majority of the employees in that unit as their representative for purposes of collective bargaining (R. 44–45).

The basic facts found by the Board were as follows: Until 1937 the longshoremen on the Pacific Coast were members of petitioners, the I. L. A. and the A. F. of L. (R. 10–11). Between 1934 and 1937, at the insistence of the I. L. A., collective bargaining on the Pacific Coast was carried on on a coast-wide basis; this resulted in agreements between the I. L. A. and the various employers' associations (R. 12–14, 19, 20). In 1937 a large ma-

[1] Petitioners assert (Pet. pp. 2, 3, 14) that the Board designated all longshore employees on the Pacific Coast as the appropriate unit for collective bargaining. That is incorrect. The Board's action was limited to the employees of members of the affiliated employers' associations who acted as a unit in bargaining with their employees. It is true that almost all companies using longshore labor are members of these associations (R. 18–19).

jority of the members of I. L. A. on the Coast voted to affiliate with the C. I. O. (R. 15–16).[2] After the I. L. W. U. had been chartered by the C. I. O., all but four of the I. L. A. locals, containing only 904 out of 11,479 longshoremen, applied for I. L. W. U. charters (R. 17–18). The employees, through the I. L. W. U., continued to bargain collectively with the employers' associations, which in June 1937 had united into a single Waterfront Employers' Association of the Pacific Coast (R. 20). In July 1937 the agreements between the longshoremen and the employers in the associations were continued on a coast-wide basis by the associations and the I. L. W. U. (R. 17, 24, 30–31).

Cards introduced into evidence at the hearing showed that 9,557 out of a total of 12,860 longshoremen employed by members of the associations had designated the I. L. W. U. as their representative (R. 44).

The Board held that the statute permitted it to find that the employees of members of an association of employers were an appropriate unit for purposes of collective bargaining (R. 28–29),[3] and that

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[2] The longshoremen's vote was 7,073 for affiliation with the C. I. O. and 2,263 opposed (R. 16).

[3] The Board is given authority to determine that the "employer" unit is the unit most appropriate for purposes of collective bargaining. Section 9 (b). The Act includes within the term "employer" "any person acting in the interest of an employer, directly or indirectly" (Section 2 (2)), and defines "person" as including "one or more individuals, partnerships, associations, corporations . . ." (Section 2 (1)).

in the light of the past and existing organization of the employers and the employees, the employees of the members of the employers' associations were the appropriate unit in the instant case (R. 26–29). Since the I. L. W. U. was shown to represent a majority of those employees, it was certified as their exclusive representative for purposes of collective bargaining. Petitioners filed objections and exceptions, which were overruled by the Board, and a motion for rehearing, which was denied (R. 59–62).

The petitioners thereupon filed this proceeding in the Court of Appeals for the District of Columbia, seeking to have the certification set aside on the ground that the appropriate unit should have been limited to the employees of each individual employer (R. 1–5). The Board moved to dismiss the petition on the ground that the court had no jurisdiction to review the certification (R. 64–68). The motion to dismiss was granted on the ground that the certification was not an order and hence was not reviewable under the Act (R. 69–75).[1] Leave to file a petition for rehearing was subse-

[1] The opinion of the Court of Appeals suggests, we think erroneously, that plaintiff might obtain relief in an independent suit in equity commenced in a district court. On March 29, 1939, petitioners filed suit in the District Court for the District of Columbia for a mandatory injunction to compel withdrawal of the certification. *American Federation of Labor* v. *Madden*, civil action No. 2214. By stipulation of the parties this suit is being continued pending final disposition of the instant case.

quently denied on the ground that the term of court had expired (R. 75–76).

ARGUMENT

We join in the request that a writ of certiorari be granted in this case. The question of the jurisdiction of the circuit courts of appeals to review certifications issued by the National Labor Relations Board is an important one, and the decision below conflicts with a decision rendered by the Circuit Court of Appeals for the Sixth Circuit. *International Brotherhood of Electrical Workers* v. *National Labor Relations Board,* decided June 28, 1939 (C. C. A. 6th).[5]

We believe, however, that the decision below was plainly correct. It may therefore be appropriate that a brief statement of the Board's position be placed before the Court.

The issue in the instant case is solely one of statutory construction—does the National Labor Relations Act empower the Court of Appeals for the District of Columbia to review a certification issued under Section 9 (c) of the National Labor Relations Act? The language of the Act, reenforced by its legislative history, demonstrates that the court below had no such jurisdiction.

Petitioners rely, as they must, upon Section 10 (f) of the Act as the basis for the jurisdiction of the court below. That section, which deals with and is headed PREVENTION OF UNFAIR LABOR

[5] A petition for a writ of certiorari will be filed on behalf of the Board in that case.

PRACTICES, provides in part, in subdivision (f), that—

> Any person aggrieved by a *final order* of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit *wherein the unfair labor practice in question was alleged to have been engaged in* or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. [Italics supplied.]

From the above language it is plain that as a prerequisite to review (1) there must be a "final order," and (2) there must be an "unfair labor practice in question."

As the court below held, a certification issued under Section 9 (c) is not an order. *United Employees Association* v. *National Labor Relations Board*, 96 F. (2d) 875 (C. C. A. 3d); cf. *Virginian Ry. Co.* v. *System Federation No. 40*, 300 U. S. 515, 562; *Shannahan* v. *United States*, 303 U. S. 596; *Cupples Co. Manuf'rs* v. *National Labor Relations Board*, 103 F. (2d) 953, 955 (C. C. A. 8th); *Wallach's, Inc.* v. *Boland*, 277 N. Y. 345.* It is not an

* In the *United Employees* case, *supra*, the court declared that a Board certification "is not a final order. It is in fact not an order at all, but simply the certification of a fact which may be entirely ignored and disregarded by the Association and the Company." In the *Virginian Ry.* case, 300 U. S. at 562, this Court declared that a certification by the

order in form, but a mere certification of the existence of a fact; and since it does not compel anyone to do anything, it is not an order in substance.[1] Failure to recognize the representative certified does not subject anyone to any compulsion unless and until a separate proceeding instituted under Section 8 (5) and 10 of the Act results in the issuance of an order against the employer, which is reviewable.

The *Shannahan* case held that a finding of fact by the Interstate Commerce Commission as to the status of an electric railway under the Railway Labor Act was not an "order" within the meaning of the Urgent Deficiencies Act. The finding there became enforceable only upon subsequent action by the National Mediation Board. Here the certification by the National Labor Relations Board—which is also merely an advisory finding of fact—becomes enforceable only after the issuance of an order in an unfair labor practice proceeding. The fact that the subsequent proceeding is to be before the same body as the original one obviously does not distinguish the two situations. If a finding of facts is not an "order" within the meaning of the Urgent Deficien-

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National Mediation Board under the Railway Labor Act was not an "order" but an "ultimate finding of fact."

[1] The issuance of a certification is not a prerequisite to the existence of an obligation to bargain collectively with the representative designated by the majority of the employees in an appropriate unit. That obligation is imposed by Section 8 (5), and is frequently enforced when no certification has been issued. The certification serves only as an informative determination for the benefit of the parties concerned.

cies Act, as the *Shannahan* case holds, it clearly is not a "final order" within the meaning of the National Labor Relations Act. Accordingly, we submit that the court below properly regarded the *Shannahan* case as controlling.

Plainly, when a certification is issued, there is no "unfair labor practice in question" unless and until the Board has found an unfair labor practice to exist in a separate proceeding instituted under Section 10.

That Section 10 (f) of the Act was intended only to permit review of orders issued in proceedings brought to prevent unfair labor practices and not of certifications issued under Section 9 (c) (except when called into question in Section 10 proceedings) appears clearly when Sections 8, 9, and 10 of the Act are read together. Section 8 states that certain types of conduct by employers shall constitute unfair labor practices. Section 10 is entitled "PREVENTION OF UNFAIR LABOR PRACTICES." Section 10 (a) empowers the Board, "as hereinafter provided, to prevent any person from engaging in any unfair labor practice * * * affecting commerce." Section 10 (b) provides that when any person is charged with engaging in any unfair labor practice the Board may issue a complaint and hold a hearing. Section 10 (c) allows the Board to make findings of fact, and if it finds that an unfair labor practice has been committed, to issue a cease and desist "order." Section 10 (e) permits the Board to petition the circuit court of appeals in any circuit

"wherein the unfair labor practice in question occurred or wherein [respondent] resides or transacts business" for the enforcement of "*such* order" upon the basis of the record before the Board. The court may enter a decree enforcing, modifying, or setting aside the order of the Board. Section 10 (f) provides, as has been pointed out, that:

> Any person aggrieved by a *final order* of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit *wherein the unfair labor practice in question was alleged to have been engaged in* or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside [italics supplied].

The paragraph further proceeds:

> Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree *enforcing, modifying, and enforcing as so modified,* or setting aside in whole or in part the *order* of the Board; * * * [italics supplied].

Section 10 as a whole clearly was designed to establish a procedure in accordance with which the

Board might enter orders prohibiting unfair labor practices, and pursuant to which the circuit courts of appeals, on petition of either the Board or an aggrieved party, might review such orders. That such is the scope of the section appears plainly from its title and from the language of each of the paragraphs preceding paragraph (f). The position of that paragraph as an integral part of Section 10 and the reference in it (as in paragraph (e)) to the circuit "wherein the unfair labor practice in question was alleged to have been engaged in" demonstrate that it was intended to have the same coverage as paragraph (e). This is confirmed by the declaration in paragraph (f) that the reviewing court shall proceed in the same manner and with the same powers as on an application by the Board under paragraph (e). Plainly, paragraphs (e) and (f), which differ only in the party instituting the proceeding, were both intended to apply to the same subject matter. Cf. *Ford Motor Co.* v. *National Labor Relations Board,* 305 U. S. 364, 369.

The above analysis of Section 10 demonstrates affirmatively that it applies only to the review of Board orders entered in unfair labor practice cases. That certifications in particular were not intended to be directly reviewable appears from Section 9. Section 9 (a) declares that the representative designated by the majority of the employees in a unit appropriate for collective bar-

gaining purposes shall be the exclusive representative of all the persons in such unit. Section 9 (b) authorizes the Board to determine the appropriate unit. Section 9 (c) states that when a question affecting commerce arises concerning representation, the Board may investigate and certify the name of the representative designated. Section 9 (d) then provides:

> Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

Section 9 (d) thus establishes a method whereby review of Board certifications may be had when an order made pursuant to Section 10 (c)—i. e., in a proceeding to prevent unfair labor practices—is based upon facts certified.* It is clear from this

* Such a case most frequently arises when an order to bargain collectively, pursuant to Section 8 (5), is based in part upon facts found in a proceeding under Section 9 (c).

provision, particularly when taken together with Section 10, that certifications issued under Section 9 (c) were not intended to be otherwise reviewable.

The legislative history of the Act also shows plainly that it was the intention of Congress that certifications be reviewable only as provided in Section 9 (d). The Senate Committee Report (S. Rept. 573, 74th Cong., 1st Sess., p. 14) declares:

> Section 9 (d) makes it absolutely clear that there shall be no right to court review anterior to the holding of an election. An election is the mere determination of a preliminary fact, and in itself has no substantial effect upon the rights of either employers or employees. There is no more reason for court review prior to an election than for court review prior to a hearing. *But if subsequently the Board makes an order predicated upon the election, such as an order to bargain collectively with the elected representatives, then the entire election procedure becomes part of the record upon which the order of the Board is based, and is fully reviewable by any aggrieved party in the Federal courts in the manner provided in Section 10. And this review would include within its scope the action of the Board in determining the appropriate unit for purposes of the election. This provides a complete guarantee against arbitrary action by the Board.* [Italics supplied.]

The House Committee Report (H. Rept. 1147, 74th Cong., 1st Sess., p. 23) similarly states:

> As previously stated in this report, the efficacy of Public Resolution 44 has been substantially impaired by the provision for court review of election orders prior to the holding of the election. Section 9 (d) of the bill makes clear that there is to be no court review prior to the holding of the election, and provides an exclusive, complete, and adequate remedy whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an election or other investigation pursuant to section 9 (c). The hearing required to be held in any such investigation provides an appropriate safeguard and opportunity to be heard. Since the certification and the record of the investigation are required to be included in the transcript of the entire record filed pursuant to section 10 (e) or (f), the Board's actions and determinations of fact and law in regard thereto will be subject to the same court review as is provided for its other determinations under sections 10 (b) and 10 (c).

In the foregoing statements it is clear that in referring to "holding of an election" it was intended to include all steps in the proceeding instituted under Section 9, and that Section 9 (d), read together with Section 10, was designed to permit judicial review of a certification only in a proceeding in which an order

relating to an unfair labor practice was issued.* This also appears plainly from the statement of Senator Walsh, Chairman of the Senate Committee, in response to a question on the floor of the Senate (79 Cong. Rec. 7658):

> Mr. COUZENS. Would the passage of the pending bill remove the appeals to the courts?
>
> Mr. WALSH. Yes; it would because it limits appeals. It provides for review in the courts only after the election has been held and the Board has ordered the employer to do something predicated upon the results of the election.

Petitioner seeks to avoid the effect of the intention of Congress thus clearly manifested by the argument that *Rochester Telephone Corp.* v. *United States*, No. 481, decided April 17, 1939, calls for a different result. The argument is without weight.

The issue, of course, is the meaning of the National Labor Relations Act. The *Rochester Telephone* case and the companion case of *Federal Power Commission* v. *Pacific Power & Light Co.*, No. 508, decided April 17, 1939, indicate plainly that the language and meaning of the statute creating the machinery for judicial review must be respected. These cases hold that the distinction between negative and affirmative is no longer to be

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* The propriety of judicial review prior to the holding of an election is directly involved in *National Labor Relations Board* v. *International Brotherhood of Electrical Workers*, *supra*, p. 6. The petition for certiorari in that case will contain, therefore, a more extended discussion of that question.

deemed of importance in determining the reviewability of administrative orders. Neither case, however, suggests that the statutory provisions are also of no importance. In the *Rochester Telephone* case the Court stated that one of the hurdles which a complainant must clear in seeking judicial review under the Urgent Deficiencies Act is—

> the specific terms of the statute granting to the district courts jurisdiction in suits challenging "any order" of the Commission.

Moreover, the *Rochester Telephone* case indicates that the authority of cases such as *Shannahan* v. *United States*, 303 U. S. 596 (see p. 8, *supra*) is not impaired in so far as they hold that administrative action which affects rights only on the contingency of future administrative action, or which does not command that anything be done or not done, is not reviewable judicially. See also *United States* v. *Los Angeles, etc., R. Co.*, 273 U. S. 299.

Respectfully submitted.

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JULY 1939.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from per-

mitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other

conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain [1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made

[1] So in original.

and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district

court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the

Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such

filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

U. S. GOVERNMENT PRINTING OFFICE: 1939